

OPEN MEETING ITEM

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

ORIGINAL



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ARIZONA CORPORATION COMMISSION

DATE: August 12, 2005

DOCKET NO: T-03571A-03-0706

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette Kinsey. The recommendation has been filed in the form of an Order on:

DMJ COMMUNICATIONS, INC.
(CC&N Cancellation)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

AUGUST 22, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

September 7 and 8, 2005

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

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A handwritten signature in black ink.
BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 DMJ COMMUNICATIONS, INC. FOR
10 CANCELLATION OF ITS CERTIFICATE OF
11 CONVENIENCE AND NECESSITY TO PROVIDE
12 COMPETITIVE RESOLD LOCAL EXCHANGE
13 TELECOMMUNICATIONS SERVICES IN THE
14 STATE OF ARIZONA.

DOCKET NO. T-03571A-03-0706

DECISION NO. _____

ORDER

15 Open Meeting
16 September 7 and 8, 2005
17 Phoenix, Arizona

18 **BY THE COMMISSION:**

19 Having considered the entire record herein and being fully advised in the premises, the
20 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

21 **FINDINGS OF FACT**

22 1. In Decision No. 61861 (August 5, 1999), the Commission granted to DMJ
23 Communications, Inc. ("DMJ" or "Applicant") a Certificate of Convenience and Necessity
24 ("Certificate" or "CC&N") authorizing it to provide competitive intrastate telecommunications
25 service as a provider of resold local exchange service in Arizona.

26 2. On September 23, 2003, DMJ filed an application requesting cancellation of its
27 CC&N.

28 3. DMJ's application stated that it was no longer in business and that it no longer had an
office or customers in Arizona.

4. On October 18, 2002, Docket No. T-3889A-02-0796, Staff filed a formal compliant
against the Phone Company Management Group ("PCMG") and several of its affiliates. The
complaint included DMJ and alleged that PCMG and/or its affiliates had provided
telecommunications service without a CC&N and had cancelled its services without proper notice to
customers.

1 5. On May 11, 2004, in Decision No. 66984, the Commission concluded that PCMG had
2 acted in violation of the Arizona Administrative Code ("A.A.C") and was subject to penalties.
3 However, the Commission found that DMJ was not subject to penalties in the above referenced
4 matter.

5 6. On June 18, 2004, Staff issued a letter of insufficiency to DMJ.

6 7. On July 8, 2004, Joyce Howard, former Vice President of Operations for DMJ,
7 responded to Staff's letter of insufficiency stating the company was no longer in business and to her
8 knowledge, security deposits were not collected by DMJ.

9 8. On June 21, 2005, by Procedural Order, Staff was ordered to file a status report
10 stating its position on DMJ's application to cancel its CC&N.

11 9. On July 22, 2005 Staff filed its report, recommending approval of DMJ's application
12 for cancellation of its CC&N.

13 10. Staff's Report stated that DMJ had 14 customer complaints between July 25, 2003 and
14 July 31, 2003 due to a discontinuation of service. The Staff Report indicated that DMJ's 700
15 customers were disconnected from service due to a billing dispute between DMJ and Qwest
16 Corporation ("Qwest"). Staff's Report further states that DMJ has not offered service to customers
17 in Arizona since July 31, 2003.

18 11. According to Staff, DMJ stated that all customer monies, related to the disconnection
19 of service, were refunded within 60 days of July 31, 2003. Further, Staff reported that all complaints,
20 inquiries and opinions regarding the refunds have been closed.

21 12. Staff believes that because all monies have been refunded to customers for monthly
22 service paid in advance there is no risk that customer advances, deposits and/or prepayments will be
23 lost by canceling DMJ's CC&N.

24 13. Pursuant to A.A.C R14-2-1107(B) an applicant for discontinuation of service must
25 publish legal notice of the application in all counties affected by the cancellation.

26 14. Staff's Report recommends that the notification requirements set forth in A.A.C. R14-
27 2-1107(B) be waived because DMJ is insolvent, has no officers and no customers. However, as
28 explained in Decision No. 67404 (November 2, 2004), it would render A.A.C. R14-2-1107

1 meaningless and would run afoul of the rule's intent and plain language to exempt an applicant from
2 the requirements of the rule because it has no customers due to its discontinuation of service.

3 15. In this case, because DMJ is insolvent, it would be impossible for the company to
4 fulfill the requirements of Rule 1107. Additionally, because all customer complaints have been
5 resolved, there is no likelihood that former customers will be harmed by the cancellation of DMJ's
6 CC&N. Therefore, the public notice requirements of A.A.C. R14-2-1107 should be waived under the
7 unique circumstances of this case. However, this waiver should not be considered precedent for other
8 carriers that wish to discontinue service. Absent the unique facts presented in this case, we will
9 strictly enforce the requirements set forth in A.A.C. R14-2-1107.

10 CONCLUSIONS OF LAW

11 1. Applicant is a public service corporation within the meaning of Article XV of the
12 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

13 2. A.A.C. R14-2-1107 applies to any telecommunications company providing
14 competitive local exchange or interexchange service on a resold or facilities-based basis that intends
15 to discontinue service or to abandon all or a portion of its service area.

16 3. The Commission has jurisdiction over Applicant and the subject matter of the
17 application.

18 4. The cancellation of Applicant's CC&N is in the public interest.

19 5. The requirements of A.A.C. R14-2-1107 should be waived based upon the unique
20 circumstances of this case.

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ORDER

IT IS THEREFORE ORDERED that the Certificate of Convenience and Necessity granted to DMJ Communications, Inc. in Decision No. 61861 is hereby cancelled.

IT IS FURTHER ORDERED that DMJ Communications, Inc.'s tariffs are hereby cancelled.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2005.

BRIAN C. McNEIL
Executive Secretary

DISSENT: _____

DISSENT: _____

YK: mj

SERVICE LIST FOR:

DMJ COMMUNICATIONS, INC.

DOCKET NO.:

T-03571A-03-0706

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